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**SECRETARY, BOARD OF
OIL, GAS & MINING**

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Cause No. M/037/025, M/037/027

Michael S. Johnson, Assistant Attorney General, and Stephen Schwendiman, Assistant Attorney General, represented the Board.

NOW THEREFORE, the Board, having fully considered the testimony adduced and the exhibits received at the hearing, being fully advised, and good cause appearing, hereby makes and enters the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Notices of the time, place, and purpose of the June 28, 2006 hearing were mailed to all interested parties, and were duly published in newspapers of general circulation pursuant to the requirements of Utah Administrative Code (“U.A.C.”) Rule R641-106-100 (2005). Copies of the Request for Agency Action were likewise mailed to all interested parties pursuant to U.A.C. Rule R641-104-135.

2. Union Carbide Company (“UCC”) began mining uranium and vanadium at the Wilson/Silverbell and Deremo/Peterson Mine Sites (collectively referred to hereinafter as the “Mine Sites”) near Monticello, Utah in 1977. These mining operations were performed under Notices of Intent M/037/027 and M/037/025, respectively. UCC transferred these Notices of Intent and the related mining operations to Umetco in 1985.

3. As part of the transfer of operations from UCC to Umetco, on January 24, 1985, Umetco entered into Mined Lands Reclamation Contracts with the Board for both the Wilson/Silverbell and Deremo/Peterson Mine Sites (collectively referred to as the “1985 Board Contracts”). The 1985 Board Contracts’ reclamation costs were based on the Division’s estimate of \$142,280 and \$33,332 for the two above-referenced sites, respectively. The 1985 Board Contracts provided for the corporate guarantee of UCC (Umetco’s parent company) to serve as surety for these reclamation obligations.

4. The 1985 Board Contracts also provided that if the Board determined at any time “that UCC’s corporate guarantee is no longer an acceptable method of insuring Umetco’s reclamation obligations,” the Board reserved the right to rescind the Reclamation Contracts if Umetco did not submit an alternative surety agreement within ninety days.

5. Umetco suspended mining operations at the Wilson/Silverbell and Deremo/Peterson Mine Sites in 1991. Umetco began reclamation efforts in 1996 by closing many of the mine openings. Revegetation efforts at the Mine Sites began in 1999.

6. Since 1996, Umetco has diligently worked to reclaim the Mine Sites. In an October 12, 2000 inspection report of the Deremo/Peterson mine site, the Division stated that “the reclamation work performed at this site was admirable.”

7. As of late 2004, the only outstanding issue between the parties regarding the completeness of the reclamation work for the Mine Sites involved certain relatively small waste pile areas (the “remaining disputed areas”) where revegetation had been only partially successful. In a December 7, 2004 letter, the Division stated that it believed that “with the exception of revegetation at Deremo/Peterson and the Wilson waste pile, reclamation has been satisfactorily completed at these sites.”

8. In the same December 7, 2004 letter, the Division raised concerns about whether UCC would qualify for a continuation of the 1985 Board Contracts based on the Division’s review of UCC’s financial condition. The Division stated that it had performed an analysis of Umetco’s parent company’s financial strength, and had determined that it did not meet certain specifications. The Division stated that “the Board may not be willing to continue the self-bonding agreement with Umetco.” The Division suggested that Umetco submit reclamation

bonds and reclamation contracts in reduced amounts (\$1600 for the remaining work at Deremo/Peterson and \$4400 for the remaining work at Wilson/Silverbell), and “[p]etition the Board for release from the Board Contract and to allow [Umetco] to substitute these reclamation bonds and contracts for the remainder of the reclamation liability.” In the alternative, the Division suggested that Umetco request that the Board leave the 1985 Board Contracts in place but release Umetco from all of its obligations under those contracts except the revegetation requirements.

9. In a January 14, 2005 letter, the Division stated that it had “decided to approach this matter differently” than outlined in the December 7, 2004 letter. The Division reiterated that “[s]ince this is a contract with the Board, the Board needs to make any decision about releasing any area, keeping the current contract, or requiring another form of surety.” The Division concluded its January 14, 2005 letter by informing Umetco that either the Board or the Division would notify Umetco if Umetco needed to take any further action.

10. Umetco ultimately submitted new reclamation contracts and sureties to the Division in May of 2005. These contracts reflected the Division’s revised reclamation cost estimates (of \$6,000 total) set forth in the December 7, 2004 letter. Umetco did not petition the Board for release or partial release of the 1985 Board Contracts in connection with the submittal of the reclamation contracts and sureties.

11. The Division eventually executed the new reclamation contracts and sureties on March, 27, 2006 (hereinafter referred to as the “2006 Reclamation Contracts”). At the same time that the 2006 Reclamation Contracts were signed, the Division sent to Umetco addenda to those contracts. These addenda noted that the 1985 Board Contracts were still in effect, referenced the

dollar amounts of those contracts, and noted that the obligations set forth in the 1985 Board Contracts were outstanding until released by the Board. The addenda were not signed by Umetco.

12. During the last four years, Umetco has attempted several times to revegetate the remaining disputed areas. Umetco has discussed its revegetation efforts with the Division, and has followed the Division's suggestions to improve the probability of success. While Umetco's efforts have resulted in some revegetation, drought, difficult soil conditions, and other factors have held successful revegetation at a lower level than would otherwise have been achieved.

13. In carrying out its inspections, the Division has recognized Umetco's efforts to revegetate the remaining disputed areas. As of the date of a December 4, 2005 inspection report, the Division found that, although some areas of the waste piles did not have the required amount of vegetation, "the operator [Umetco] could make a strong case that everything practical has been done to revegetate these areas." In the same inspection report, the Division recommended waiting until the spring of 2006 to see if the vegetation met with the Division's standards. Additionally, the Division noted that if the vegetation did not meet the Division's standards, then Umetco could seek release from its revegetation requirements based upon the regulation that allows release when a mine site has been reclaimed to "within practical limits."

14. Umetco filed its Request for Agency Action in this Cause on May 10, 2006. Umetco asserts that it has either achieved the required level of revegetation on the remaining disputed areas or at least that the disputed areas have been reclaimed "within practical limits."

15. The Division indicated in its Staff Memorandum that it planned to conduct a new inspection of the Mine Sites in June prior to the hearing date.

16. Division Reclamation Specialist Paul Baker performed the Division's follow-up inspection of the Mine Sites on June 13, 2006.

17. Although the Division reiterated at the hearing that it had not yet generated its final report based upon Paul Baker's inspection, and that Mr. Baker's testimony did not constitute the final recommendation of the Division, the Board heard testimony regarding the completeness of reclamation based upon what Mr. Baker observed in his capacity as the Division's Reclamation Specialist during his June 13, 2006 inspection.

18. The Board acknowledges the role played by the Division in performing inspections of mine sites and bringing its technical expertise to bear to ensure the completeness of reclamation work prior to the release of reclamation sureties as set forth in Utah Code Ann. §40-8-14 (2006) and applicable rules. While the Division has not yet issued its final report in this matter, based upon the testimony of Division Reclamation Specialist Paul Baker regarding his June 13, 2006 inspection, and under the particular facts of this case, the Board finds the Division's role in inspecting the Mine Sites and reviewing the reclamation work was substantially fulfilled, and that waiting for the completion and submittal of final reports would serve no further purpose. The Board finds that in conjunction with the other evidence presented, it has received the required input from the appropriate Division personnel in a manner that, although differing from normal channels, is sufficient under these facts to make a finding on the completeness of the reclamation work at issue.

19. Although Umetco has experienced difficulties in its attempts to revegetate the remaining disputed areas as noted above, nevertheless, based upon the testimony of Reclamation Specialist Paul Baker, if the pre-mining vegetation ground cover numbers set forth in the Mining

and Reclamation Plan are used, the Board finds that revegetation efforts have achieved 70 percent of premining vegetative ground cover.

20. Furthermore, the Board finds, based upon the testimony of Division Reclamation Specialist Paul Baker and the other evidence adduced, that Umetco has exercised diligence in its reclamation efforts, has completed reclamation work to “within practical limits,” and has performed all other reclamation requirements at the Mine Sites.

21. The Division did not set forth, in its pleadings or through the testimony of its witnesses, any specific facts pertaining to the revegetation work or other reclamation efforts at the Mine Sites which would preclude a finding that reclamation work was complete.

CONCLUSIONS OF LAW

1. Due and regular notice of the time, place, and purposes of the June 28, 2006 hearing was given to all interested parties in the form and manner and within the time required by law and the rules and regulations of the Board. Due and regular notice of the filing of the Request for Agency Action was given to all interested parties in the form and manner and within the time required by law and the rules and regulations of the Board.

2. The Board has jurisdiction over the parties and subject matter of this Request for Agency Action pursuant to Chapter 8 of Title 40 of the Utah Code Annotated, and has the power and authority to make and promulgate the order herein set forth.

3. Pursuant to Utah Code Ann. §40-8-14(3) and Utah Admin. Code R647-4-113.4.16, an operator may, with the approval of the Board, provide a “written contractual agreement” (“**Board Contract**”) as surety if the operator demonstrates sufficient financial strength and makes other enumerated showings regarding the character of the operations and the type of reclamation activities planned.

4. Under the rules applicable from and after February 23, 2006, once a Board Contract is established as the form of surety, “the Board shall retain the sole authority over the release, partial release, revision or adjustment of the surety amount, if any, which shall be in accordance with the agreement and the Act.” Utah Admin. Code R647-4-113.7.

5. The 1985 Board Contracts themselves reserve unto the Board the right to determine whether “UCC’s corporate guarantee is no longer an acceptable method of insuring Umetco’s reclamation obligations,” and to require an alternative form of surety if it is not.

6. Given that the 1985 Board Contracts were already in place as the form of surety securing Umetco’s reclamation obligations at the Mine Sites, the subsequent activities of the Division and Umetco in executing the “substitute” 2006 Reclamation Contracts were contrary to the terms of the Board Contracts and Utah Admin. Code R647-4-113.7, and were of no force or effect to cause a “release, partial release, revision or adjustment of the surety amount.”

7. Because the Board did not accept or otherwise approve the 2006 Reclamation Contracts, only the 1985 Board Contracts are binding upon the parties and control Umetco’s reclamation obligations with respect to the Mine Sites.

8. Utah Administrative Code R647-4-11.13 provides that revegetation for reclamation purposes shall be considered accomplished when (1) revegetation efforts have achieved 70 percent of the premining vegetative ground cover, or (2) the revegetation work has been satisfactorily completed within “practical limits.” The Board finds, based upon the evidence adduced including the Division’s reports and testimony, that both of these alternative grounds have been satisfied with respect to reclamation at the Mine Sites, and that revegetation is complete.

9. Because all reclamation obligations of Umetco with respect to the Mine Sites have been fulfilled, release and termination of the 1985 Board Contracts is just and proper.

ORDER

IT IS THEREFORE ORDERED that:

A. Umetco's Request for Agency Action is granted as follows:

1. The Board hereby terminates, and releases Umetco from its obligations under, the 1985 Board Contracts;

2. For the reasons set forth above, the Board declares the 2006 Reclamation Contracts to be of no force and effect and therefore directs the Division to terminate those contracts and release the associated bonds.

B. The Board has considered and decided this matter as a formal adjudication, pursuant to the Utah Administrative Procedures Act, Utah Code Ann. §§ 63-46b-6 through -10 (Supp. 2003), and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641 (2003).

C. This Findings of Fact, Conclusions of Law, and Order ("**Order**") is based exclusively upon evidence of record in this proceeding or on facts officially noted, and constitutes the signed written order stating the Board's decision and the reasons for the decision, as required by the Utah Administrative Procedures Act, Utah Code Ann. § 63-46b-10 (Supp. 2003), and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641-109 (2003); and constitutes a final agency action as defined in the Utah Administrative Procedures Act and Board rules.

D. Notice of Right of Judicial Review by the Supreme Court of the State of Utah. As required by Utah Code Ann. §63-26b-10(e) to -10(g), the Board hereby notifies all parties to this proceeding that they have the right to seek judicial review of this Order by filing an appeal with the Supreme Court of the State of Utah within 30 days after the date this Order is entered. Utah Code Ann. § 63-46b-14(3)(a) and -16 (1998).

E. Notice of Right to Petition for Reconsideration. As an alternative, but not as a prerequisite to judicial review, the Board hereby notifies all parties to this proceeding that they may apply for reconsideration of this Order. Utah Code Ann. § 63-46b-13 (Supp. 2003). The Utah Administrative Procedures Act provides:

(1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Utah Code Ann. § 63-46b-13 (Supp. 2003).

The Rules of Practice and Procedure before the Board of Oil, Gas and Mining entitled "Rehearing and Modification of Existing Orders" state:

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition

for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of that month.

Utah Admin. Code R641-110-100 (2003).

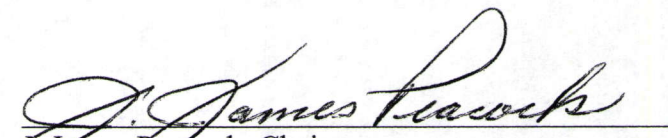
See Utah Administrative Code R641-110-200 for the required contents of a petition for rehearing. The Board hereby rules that should there be any conflict between the deadlines provided in the Utah Administrative Procedures Act and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the aggrieved party may seek judicial review of the order by perfecting an appeal with the Utah Supreme Court within 30 days thereafter.

F. The Board retains exclusive and continuing jurisdiction of all matters covered by this Order and of all parties affected thereby; and specifically, the Board retains and reserves exclusive and continuing jurisdiction to make further orders as appropriate and authorized by statute and applicable regulations.

G. The Chairman's signature on a facsimile copy of this Order shall be deemed the equivalent of a signed original for all purposes.

ENTERED this 14th day of September, 2006.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING


J. James Peacock, Chairman

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER for Docket No. 2006-010, Cause No. M/037/025 and M/037/027, to be mailed with postage prepaid, this 19th day of September, 2006, to the following:

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